APPENDIX

[Filed May 23, 1989]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 83-5846 (CBM)

PREFERRED COMMUNICATIONS, INC.,
Plaintiff,

v.

CITY OF LOS ANGELES and DEPARTMENT OF WATER AND POWER,
Defendants.

ORDER RE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S DAMAGES CLAIMS

This matter came on for hearing on March 20, 1989 in the above-entitled court, the Hon. Consuelo B. Marshall, Judge presiding, on, inter alia, the motion of defendants City of Los Angeles and Department of Water and Power ("defendants") for summary judgment as to plaintiff Preferred Communications Inc.'s ("plaintiff's") damages claims.

Having reviewed the relevant papers and documents and having heard oral argument, the Court hereby DENIES defendants' motion for partial summary judgment as to plaintiff's *compensatory* damages claims, however the Court GRANTS defendants' motion as to plaintiff's claims for lost profits and any damages claims other than for compensatory damages.

Pursuant to its ruling, the Court issues the following Findings of Fact and Conclusion of Law:

FINDINGS OF FACTS

1. Plaintiff Preferred Communications, Inc. was formed in July, 1983, two months before the initial complaint in this action was filed.

2. Preferred has no written corporate bylaws, resolutions, directors' meeting minutes, annual reports, profit and loss statements, financial reports, financial statements, budgets, prospectuses or books and records of account.

3. Clinton Galloway, Carl Galloway, and Perry Parks are Preferred's directors and Clinton Galloway, the only officer, is President.

4. Preferred has issued no shares of stock, and there is no written agreement showing the stock ownership of Preferred.

5. Preferred's assets consist of loan from Perry Parks and Clinton Galloway, and a $15,000 investment by a Russell Grisanti and a Donna Grisanti. There is no written evidence of these loans or investments.

6. Preferred has never constructed, owned or operated a cable television system. None of Preferred's principals, Clinton Galloway, Carl Galloway or Perry Parks, have had experience in the operation of a cable system.

7. Preferred has never constructed, owned, or operated any other type of system, station or facility for the production, transmission, retransmission or distribution of television signals.

8. Preferred has entered into no contracts with regard to the construction of a cable system, and it has not retained any marketing consultant or anyone else to conduct marketing surveys for it.

9. As of May 15, 1987, Preferred had not prepared, commissioned, or sought any formal marketing, financial or demographic studies or analyses relating to the cable system it allegedly intends to construct.

10. Other than the document authored and produced by Clinton Galloway on August 31, 1988, and referred to by plaintiff's agents as "the business plan," Preferred has no studies concerning the cost of construction of the cable system it allegedly intends to construct.

11. Any Finding of Fact deemed to be a Conclusion of Law shall be treated as a Conclusion of Law.

CONCLUSIONS OF LAW

1. If the non-moving party to a summary judgment motion bears the burden of proof with respect to an element essential to its case, and that party fails to make a sufficient showing to establish a genuine dispute of fact with respect to the existence of the element, summary judgment is appropriate. *California Architectural Bldg. Products v. Franciscan Ceramics*, 818 F.2d 1446, 1468 (9th Cir. 1987), *cert. denied*, 108 S.Ct. 689 (1988), citing *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552-543, 91 L.Ed.2d 265 (1986).

2. § 1983 creates a species of tort liability to protect individuals whose constitutional rights have been violated. *Memphis Community School District v. Stachura*, —— U.S. ——, 106 S.Ct. 2537, 2542, 91 L.Ed.2d 249 (1986).

3. Damages may be recovered from municipalities under 42 U.S.C. § 1983 ("§ 1983"). *Owen v. City of Independence*, 445 U.S. 622, 100 S.Ct. 1398, 632 L.Ed.2d 673 (1980).

4. A person is entitled to the same First Amendment rights whether the First Amendment activity in question is engaged in for profit or not for profit. *Preferred Communications, Inc. v. City of Los Angeles*, 754 F.2d 1396,

1410 n.10 (9th Cir. 1985), *aff'd*, 476 U.S. 488, 106 S.Ct. 1034, 90 L.Ed.2d 480 (1986).

5. Lost profits may be claimed under § 1983. *City of Watseka v. Illinois Public Action Council*, 796 F.2d 1547 (7th Cir. 1986), *aff'd mem.*, —— U.S. ——, 107 S.Ct. 919, 93 L.Ed.2d 972 (1987).

6. The purpose in allowing damages for § 1983 claims is to compensate for actual harm done. *Stachura, supra*, 106 S.Ct. at 2543.

7. The 'value' or 'importance' of constitutional rights are not elements of compensatory damages claims in § 1983 cases; such factors are abstract and cause uncertainty in the calculation of damages. *Stachura*, 106 S.Ct. at 2545.

8. If plaintiff establishes operating experience sufficient to allow a reasonable estimate of probable income and expense, damages from lost profits are awardable. *Edwards v. Container Kraft Carton*, 161 Cal.App.2d 752, 760, 327 P.2d 622 (1958).

9. Plaintiff Preferred Communications, Inc. has failed to make a sufficient showing that it has enough operating experience to allow a reasonable estimate of its probable income and expense had it been awarded a cable franchise by the City of Los Angeles. Thus, plaintiff may not claim damages in the form of lost profits.

10. Any Conclusion of Law deemed to be a Finding of Fact shall be treated as a Finding of Fact.

This order does not preclude plaintiff from recovering compensatory damages upon proof of such damages.

IT IS SO ORDERED.

Dated: 5/23/89

/s/ Consuelo B. Marshall
CONSUELO B. MARSHALL
Judge
United States District Court

[Filed Jun. 7, 1989]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 83-5846 (CBM)

PREFERRED COMMUNICATIONS, INC.,
Plaintiff,

v.

CITY OF LOS ANGELES and DEPARTMENT OF WATER AND POWER,
Defendants.

ORDER RE STANDING

This matter came on for hearing on March 20, 1989 before the above-entitled Court, the Hon. Consuelo B. Marshall, Judge presiding, on, inter alia, the motion of defendants City of Los Angeles and Department of Water and Power ("defendants") for summary judgment as to plaintiff's lack of standing.

Having reviewed the relevant papers and documents and having heard oral argument, the Court hereby DENIES defendants' motion.

Standing must exist, and therefore may be examined, at all stages of the proceeding, and not merely when the action is initiated or during an initial appeal. *Safir v. Dole*, 718 F.2d 475, 481 (D.C. Cir. 1983), citing *DeFunis v. Odegaard*, 416 U.S. 312, 319, 94 S.Ct. 1704, 1707, 40 L.Ed.2d 164 (1974).

The sole case upon which defendants rely in bringing the instant motion is *Nor-West Cable Communication, Partnership v. City of St. Paul*, 3-83 CIV 1228 (D.Minn.

1988). After a trial on the merits and based on the special verdict rendered by the jury that plaintiff Nor-West did not have the "financial ability, technical capabilty, or the intent necessary to design, construct, or operate a cable television system" at the time of trial, the Court found, inter alia, that plaintiff lacked the necessary Article III standing to assert that its first amendment rights had been violated. *Id.* at p. 6.

However, as *Nor-West* is an unpublished court opinion from a different circuit, it has no binding effect on this Court.

Plaintiff challenges the constitutionality of the City's franchising ordinances. Plaintiff has been barred from access to the City's utility facilities because of plaintiff's refusal to participate in the City's franchising procedure. The Court finds that plaintiff has "show[n] that [it] has . . . suffered some actual or threatened injury as a result of the putatively illegal conduct of defendant[s]," *Valley Forge Christian College v. American United for Separation of Church & State,* 454 U.S. 464, 102 S.Ct. 752, 70 L.Ed. 700 (1982) citing *Gladstone Realtors v. Village of Bellwood,* 441 U.S. 91, 99, 99 S.Ct. 1601, 1607, 60 L.Ed.2d 66 (1979), "and that the jury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision.'" *Valley Forge,* 102 S.Ct. at 758 citing *Simon v. Eastern Kentucky Welfare Rights Org.,* 426 U.S. 26, 38, 41, 96 S.Ct. 1917, 1924-25, 48 L.Ed.2d 450 (1976).

Accordingly, the Court finds that plaintiff has standing to assert its first amendment rights in this case.

IT IS SO ORDERED.

Dated: 6/5/89

/s/ Consuelo B. Marshall
CONSUELO B. MARSHALL
Judge
United States District Court

CHARTER OF THE CITY OF LOS ANGELES

Sec. 3. The rights and powers granted by this charter shall be subject to the restrictions set forth in this section, or elsewhere in this charter. (Added, 1925.)

* * * *

(8) (a) The city may grant franchises for fixed terms, permits or privileges, for the construction and operation of plants or works necessary or convenient for furnishing the city and its inhabitants with transportation, communication, terminal facilities, water, light, heat, power, refrigeration, storage, or any other public utility or service; may prescribe the terms and conditions of any such grant, and may prescribe by ordinance approved by a vote of the people, the method of procedure for making such grants, subject to the limitations elsewhere contained in this charter; except that the Council shall adopt an ordinance which shall establish the procedure for granting to the holder of an existing franchise, any franchise required for the extension of facilities, ordered by the city, as authorized in pargraph (c) of this subdivision, or for granting a new franchise for a period not exceeding ten years, to replace a franchise about to expire, as authorized in paragraph (d) of this subdivision; provided that such procedure ordinance and every ordinance granting any such franchise shall be subject to the referendum. (Added, 1925.)

[Citations omitted]

ORDINANCE NO. 58,200

An Ordinance prescribing the method of procedure for the granting of franchises, permits and privileges across, under and over streets, highways and other places in the City of Los Angeles, and replacing Ordinance No. 27,557 (New Series), submitted to and approved by a vote of the people at the general municipal election held June 3, 1913.

The People of the City of Los Angeles do ordain as follows:

Section 1. No person, firm or corporation shall exercise any franchise, permit or privilege mentioned in this ordinance except in so far as such person, firm or corporation may be entitled to do so by direct and unlimited authority of the constitution of the State of California or of the constitution or laws of the United States, in, upon, over, under or along any street, highway or other place in the City of Los Angeles unless such person, firm or corporation shall have obtained a grant therefor in accordance with the provisions of the charter of said city and of the procedure prescribed by this ordinance and in accordance with the provisions of the ordinance granting such franchise, permit or privilege.

Sec. 2. Every franchise, permit or privilege hereinafter enumerated in this section shall be granted by ordinance in accordance with the method of procedure prescribed by this ordinance. The franchises, permits or privileges contemplated by this ordinance shall include:

1. Every franchise, permit or privilege to construct, maintain or operate a street railroad along, upon, over, in, under or across any street, lane, alley, court, highway, road or other public place.

2. Every franchise, permit or privilege to construct, maintain or operate an interurban railroad along, upon, over, in, under or across any street, lane, alley, court, highway, road or other place, and

whether the same is to be operated on the surface, in subways or upon an elevated structure.

3. Every franchise, permit or privilege to construct, operate or maintain an underground street railroad through subways, and for the construction, operation and maintenance of elevated street railways, along, across, under, in or over any street, highway, lane, court, alley or other place; every franchise, permit or privilege to construct, maintain or operate pipes, tubes, tunnels, or conduits along, upon, over, in, under or across any lane, street, alley, court, highway, road or other pubilc place in said street, for the purpose of transmitting water, gas, steam, heat, oil, air, substances for refrigerating, containers with merchandise through compressed air tubes or other substances or utility.

4. Every franchise, permit or privilege to erect, construct, lay, maintain and operate, poles, pipes, conduits, wires or cable upon, over, under, in, across or along any street, lane, court, highway, road or other place in said city for the purpose of transmitting power, heat, electricity or electric energy or for communication by telephone, telegraph or signal systems.

5. Every franchise, permit or privilege for the construction and operation of any other plants necessary or convenient for furnishing the city and its inhabitants with transportation, communication, terminal facilities, water, light, heat, power, refrigeration, storage or any other public service.

Nothing in this ordinance shall be construed as applying to the granting of franchises, permits and privileges granted or to be granted by the Board of Harbor Commissioners as contemplated by Section 140 of the charter of the City of Los Angeles.

Sec. 3. Every applicant for a franchise, permit or privilege mentioned in Section 2 of this ordinance shall

file, or heretofore shall have filed, with the Council application therefor in writing setting forth in such application the name and address of such applicant, a description of the franchise, permit or privilege applied for, and the streets, highways or other places along, upon, over, in, under or across which it is proposed to exercise such franchise, permit or privilege.

Sec. 4. Every application made to the Council for a franchise, permit or privilege mentioned in this ordinance shall, before any action is taken thereon, be referred by the Council to the Board of Public Utilities & Transportation for its recommendation respecting the same. The Board of Public Utilities & Transportation shall proceed to inquire into such application and, within thirty (30) days after such application shall have been referred to it, or longer if allowed by the Council, shall report to the Council its recommendation relative thereto. If, in the judgment of said Board of Public Utilities & Transportation, the franchise, permits or privilege applied for should not be advertised for sale or granted, it shall so report, stating its reasons therefor; and if, in the judgment of said board, such franchise, permit or privilege should be granted, it shall recommend the terms and conditions upon which the same shall be granted.

No franchise, permit or privilege mentioned in this ordinance shall be advertised for sale or granted unless the application therefor shall have been referred to the Board of Public Utilities & Transportation: provided however, that if said board shall fail to report thereon within the time prescribed, or as extended by the council, nothing herein contained shall be construed to prevent the council, at is discretion, from proceeding to advertise such franchise, permits or privilege for sale or from awarding the same as provided by this ordinance.

No franchise, permits or privilege mentioned in this ordinance shall be offered for sale or granted, contrary to the recommendation of said Board of Public Utilities &

Transportation, except upon a three-fourths (¾) vote of the entire council.

Sec. 5. 1. The council shall, if it proposes to grant any such franchise, permit or privilege, advertise the fact of such application, together with the statement that it is proposed to grant the same, once in a newspaper of general circulation, printed, published and circulated in said city.

2. Such advertisement shall state the character of the franchise, permit or privilege proposed to be granted, and, if it be for a street railroad or an interurban railroad, or an underground or elevated street or interurban railroad, the route to be traversed, shall state the amount of the bond required to be filed by the grantee to insure the faithful performance of the conditions of such franchise: shall state, (except in the case of a franchise granted for ten (10) years to replace a franchise about to expire), that sealed bids theefor will be opened at a stated time and place, and that the franchise, permit or privilege will be awarded to the bidder offering:

(a) To pay to the city during the life of the franchise, permit or privilege, the highest percentage of gross annual receipts received from the use, operation or possession of such franchise, permit or privilege: provided, that such percentage of gross annual receipts shall not be less than two per cent (2%) of such gross annual receipts; or

(b) To pay to the city such other compensation or consideration for the use, permit or privilege as may be prescribed by the Council in the advertisement for bids and notice of sale; provided, that subdivision (a), clause 2 of section 5 of this ordinance shall not be included in any advertisement for bids for any franchise granted to any interstate, steam railroad or franchise for oil, gas or other pipe line, or for any other franchise where, in the

opinion of the Board of Public Utilities & Transportation, it is impractical to compute net or gross receipts, for that portion of the railroad, pipe line or other privilege covered by said proposed franchise; provided, that the Council may, in said advertisement for bids and notice of sale, invite bids or any one, or all, or any part of the bases prescribed under paragraphs (a) and (b) of section 2, of section 5 of this ordinance.

(c) The terms and conditions to be imposed upon the grantee on account of the use, operation or possession of such franchise, permit or privelege, shall be included in said advertisement for bids and notice of sale.

3. The procedure for receiving bids and awarding any franchise, permit or privelege shall be as follows:

All sealed bids shall be delivered to and filed with the City Clerk, and at the time and place specified in said advertisement the Council shall, in open session, examine and publicly declare the same: provided, however, that no bid shall be considered unless accompanied by a cash deposit or a certified check as hereinafter provided.

Upon the opening and declaration of such bids by the Council, any responsible person, firm or corporation present or represented, then accompanying his or its bids with a cash deposit or certified check equivalent to that required to be filed with sealed bids may raise the bid for such franchise, permit or privelege above the highest sealed bid therefor, on any one of the bases of compensation as prescribed under subsection 2, Section 5 of this ordinance, and included in the advertisement for bids and notice of sale. Such bidding may thereafter continue until finally such franchise permit or privilege shall be struck off, sold, and awarded by the Council to the highest bidder: provided that if, in the judgment of the Council, no adequate or responsible bid has been made, the Counciy may withdraw any franchise, permit or privilege from sale, or advertisement for new bids.

Every application for a franchise, permit or privilege shall be accompanied by a cash deposit of no less than Two Hundred Dollars ($200.00) or by a certified check for said amount, payable to the City Treasurer and certified to by some responsible bank in the City of Los Angeles as a fund out of which to pay all expenses connected with such application, and every bid shall be accompanied by a cash deposit of not less than Five Hundred Dollars ($500.00), or a certified check for said amount, payable to the City Treasurer, ceritfied to by some responsible bank in the City of Los Angeles as a guarantee of good faith by the bidder.

Upon the franchise, permit or privilege being awarded, all deposits made by unsuccessful bidders shall be returned. The deposit of the successful bidder shall be retained until the approval and filing of a bond hereinafter provided for, whereupon the Five Hundred Dollar deposit shall be returned and the remainder, if any, of the Two Hundred Dollars after the payment therefrom of all expenses incurred by the city in connection with the advertising, engineering, clerical work and awarding of such franchise, permit or privilege, shall be returned.

5. No clause or condition of any kind shall be inserted in any advertisement of any franchise, permit or privilege offered for sale under the terms of this ordinance which shall directly or indirectly restrict free and open competition in bidding therefor.

Sec. 6. The grantee of such franchise, permit or privilege shall, within five (5) days after the awarding of such contract, permit or privilege, file with the City Clerk of the said city a bond running to the said city in the penal sum fixed by the Council in the advertisement for bids and within thirty (30) days after the filing and approval of such bond, such franchise, permit or privilege shall be granted by ordinance, subject to the referendary provisions of the charter to the person, firm or corporation to whom it shall have been struck off, sold or awarded; and in case such bond shall not be so filed the award of such

franchise, permit or privilege shall be set aside and shall, in the discretion of the Council, be readvertised and again offered for sale in the same manner and under the same restrictions as hereinbefore provided, and the amount deposited by such bidder with his bid shall be forfeited to the city as liquidated damages.

Sec. 7. Permits may be granted by the Council by ordinance, for the construction and maintenance of spur tracks or side tracks and the running of cars thereon for the purpose of connecting warehouses, manufactories or other business industries and enterprises with any line of railroad or railway within the city, upon such terms and subject to such regulations and conditions as may be prescribed from time to time by ordinance, such tracks to be used for the transportation of freight only, and not to be used for the purpose of excavating or filling in a street or portion of a street, or the adjoining land, and for such limited time as may be necessary for such purpose and no longer. Such tracks must be laid and operated in such manner and under such restrictions as not to unreasonably interfere with the use of a street by the public.

1. No such permits shall be revoked until after a hearing before the Board of Public Utilities & Transportation and its recommendation approved by a three-fourths vote of the Council. The Council need not advertise for sale any permit granted under the conditions of this section.

Provided, that each such application shall first be referred to the Board of Public Utilities & Transportation for its recommendations, and proceedings taken as to such reference in accordance with the provisions of Section 4 of this ordinance.

Nothing in this section, however, shall be construed as preventing the granting of a franchise for any of the purposes mentioned above where application is made therefor in compliance with the provisions of this ordinance.

Sec. 8. Every franchise, permit or privilege for the construction, extension or operation of a utility requiring a franchise shall reserve to the city certain rights and privileges, as follows:

1. The right to revoke—for non-compliance with any of the conditions of the franchise.

2. The right to purchase the property of such utility or to find a purchaser therefor in accordance with the following procedure:

(a) The City may purchase any utility at any time after five (5) years from the date that such franchise becomes effective, by delivering a notice in writing of such intention to purchase, at least one (1) year prior to the date upon which the city proposes to exercise its right to purchase said utility; together with a notice in writing of the intention of said city to purchase and take over said property of such utility at the date fixed for the purchase of said utility, or to find a purchaser therefor, upon the payment by said city, or said purchaser, to said grantee owning such property under said franchise of the fair value of the property of such utility, as hereinafter provided.

(b) That in the event the City of Los Angeles shall elect to purchase said utility and shall notify said grantee in writing of its intention to purchase and take over the property of such utility, or to find a purchaser therefor, as herein provided, said grantee, at the period fixed in said notice for the termination of said franchise and upon payment or tender of payment by the city, or by said purchaser, to said grantee of the purchase price of said property of such utlity, as hereinafter provided, shall transfer the title to said property by good and sufficient written instrument to said city or to said purchaser, and the payment or tender of payment by said city or said purchaser, to said grantee of the said purchase price

of the property of such utility shall, ipso facto, operate to transfer the title of said property to said city or to said purchaser, and the grantee shall forthwith surrender to said city or to said purchaser, and the city or said purchaser may forthwith take and hold possession of the property of such utility.

(c) That in the event said franchise shall expire by operation of law, said city shall have the right, at its option, declared not more than one (1) year before the expiration of the franchise term as herein fixed, which right an option is hereby reserved to said city, to purchase and take over the property of such utility, and in the event that said city shall so exercise its right under such option the said city shall pay to the said grantee the fair value of the property of such utility as herein provided.

(d) The term "fair value" as used herein shall be construed to mean the reasonable value of the property of such utility having regard to its condition of repair and its adaptability and capacity for the use for which it shall have been originally intended. The price to be paid by the City for any utility shall be on the basis of actual cost to the utility for the property taken, less depreciation accrued, as of the date of purchase, with due allowance for obsolescence, if any, and the efficiency of its units to perform the duties imposed on them; no allowance shall be made for franchise value, good will, going concern, earning power, increased cost of reproduction or increased value of right of way or allowance for damages by reason of severance.

(e) That the valuation of the property of such utility proposed to be purchased upon the termination of said franchise as herein provided, or otherwise, shall be determined by a board of three arbitrators of whom one shall be appointed by the city, one by the grantee, and the third by the two

arbitrators so appointed. Said arbitrators shall be appointed within thirty days after the declaration by the city of its option to purchase said property of such utility, or to find a purchaser therefor. In case said arbitrators fail to make and file an award within the time hereinafter limited, a new board of three arbitrators shall be appointed as hereinbefore prescribed. The board of arbitrators shall immediately upon the appointment of its members enter upon the discharge of its duties. Any vacancy in the board of arbitrators shall be filled by the party who made the original appointment to the vacant place.

(f) In the event the grantee shall fail to appoint an arbitrator within thirty days after the declaration by the city of its option to purchase the property of such utility or to find a purchaser therefor, or in the event of the death or designation of such arbitrator so appointed and such grantee, its successors or assigns, shall fail to appoint an arbitrator to fill such vacancy within ten (10) days thereafter, or in the event the two arbitrators appointed by the city and grantee, as hereinbefore provided, shall fail to appoint a third arbitrator within sixty (60) days after the declaration of the city of its option to purchase the property of such utility, or to find a purchaser therefor, then upon application made either by the city or by said grantee after (5) days' notice in writing to the other party, such arbitrator shall be appointed by the preciding Judge of the Superior Court of the State of California, in and for the County of Los Angeles, and the arbitrators so appointed shall have the same powers and duties as though he had been appointed in the manner hereinabove prescribed.

(g) The award of the arbitrators must be made and filed with the City Clerk of said city within three (3) months after their appointment, and a majority of the arbitrators who agree thereto may make such

award. The amount of the valuation of the property of such utility to be paid to said grantee, as herein provided, in lawful money of the United States, less an amount equivalent to or sufficient to offset or pay any outstanding unsettled, unpaid or disputed debts, claims or incompleted or unsettled contracts or pending damage suits or judgments against or affecting said grantee, or any encumbrances or defects in title which may constitute a charge or lien upon the property of such utility. The amount so deducted or reserved shall be placed by the city, if the property of such utility be purchased by the city in a special valuation of the property over the par value of the bonds so assumed shall be the purchase price to be paid to the grantee by the city for said property.

Sec. 9. Every indeterminate franchise for the construction, extension or operation of a utility, shall be granted in accordance with the conditions set forth in Section 3 of Article 1 of the charter, as well as those hereinbefore in this ordiance contained, and such as shall be prescribed by the Council.

Sec. 10. Every grant of every such franchise, permit or privilege shall provide that the Board of Public Utilities & Transportation (subject to appeal to the Council) shall have the power to order extensions of the facilities authorized therein, provided that the Board of Public Utilities & Transportation shall have determined, after a hearing duly had and of which the utility has had due notice at least thirty (30) days prior to such hearing, that public necessity and convenience require the extension: provided, however, that if such extension of facilities is for construction or operation outside of the original franchise to which it will connect (except extensions granted to indeterminate franchises which extensions shall become a part of the aggregate property of such grantee and shall be subject to all the obligations and rights in favor of the city applicable to the property of the grantee

by virtue of such indeterminate franchise), then the utility shall not be required to comply with such order until the Council shall have granted such additional franchise rights as may be required to cover such extension.

Every such order for extension, by the Board of Public Utilities & Transportation, shall be subject to appeal to the Council. Such appeal shall be made within fifteen (15) days after the making of such order by filing a written notice thereof with the Council. Such notice shall state the grounds upon which the appeal is made and thereupon the Council shall consider such appeal and within thirty (30) days thereafter shall either affirm or revoke or modify such order of the Board; and unless such action is taken by the Council within said period of thirty (30) days the order of the Board of Public Utilities & Transportation shall become final.

Sec. 11. Fixed term franchise, permits or privileges shall not be granted for a longer period of time than twenty-one (21) years except in the case of franchises for the construction and operation of subways and elevated railways, or for a period exceeding ten (10) years for a franchise about to expire.

No fixed term franchises, permits or privileges for the construction or operation of elevated railways or subways shall be granted for a period exceeding forty (40) years for the original franchise, or for a period exceeding ten (10) years for a franchise about to expire, all in accordance with the provisions of paragraph (d), subsection 8, and section 3 of the charter.

Indeterminate franchises may be granted in accordance with provisions of this ordinance.

Re-settlement franchise for an indeterminate period may be granted to a public utility operating in the City of Los Angeles under more than one franchise issued for different periods and for different expiration dates, for different parts of its system, which re-settlement franchises,

shall be in lieu of all other franchises held by it within the corporate limits of Los Angeles. Such re-settlement franchise may be for an indeterminate or fixed term and filed by the grantee in conflict therewith. Such resettlement franchise shall be granted in accordance with the provisions of this ordinance.

Sec. 12. Nothing in this ordinance shall be construed as preventing the Council from inserting in any advertisement for bids and notice of sale, or in any ordinance granting any franchise, permit or privilege any conditions or requirements not inconsistent with the provisions of the constitution of the State, or of the City Charter.

Sec. 13. That Ordinance No. 27,557 (New Series), entitled "An ordinance prescribing the methods of procedure for the granting of franchises, permits and privileges across, under and over streets, highways and other places, in the City of Los Angeles," submitted to and approved by a vote of the people at the general municipal election held June 3, 1913, be and the same is hereby repealed.

Sec. 14. I hereby certify that the Council did, at its own instance, submit the foregoing ordinance to a vote of the qualified electors of the City of Los Angeles, at the General Municipal Election held in said City on Tuesday, the 7th day of June, 1927, and that on Monday, the 13th day of June, 1927, the Council of said City, by a resolution duly and regularly adopted, found, determined and declared that a majority of the votes cast at said General Municipal Election upon said ordinance, was cast in favor thereof, and that said ordinance was thereby adopted.

ROBT. DOMINGUEZ.

City Clerk of the City of Los Angeles.